CRIM., NO.
2 2 3 4 9

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

DOMENIC N. MASTRIPPOLITO, CLINTON B. HOWARD,

Appellants,

VS.

UNITED STATES OF AMERICA,

Appellee.

FILED

FEB 2 0 1968

WM B LUCK LEAS

APPELLANTS' OPENING BRIEF

JOHN J. BRADLEY
Attorney at Law
215 West Fifth Street
Los Angeles, California
MAdison 9-2261

Attorney for Appellants.



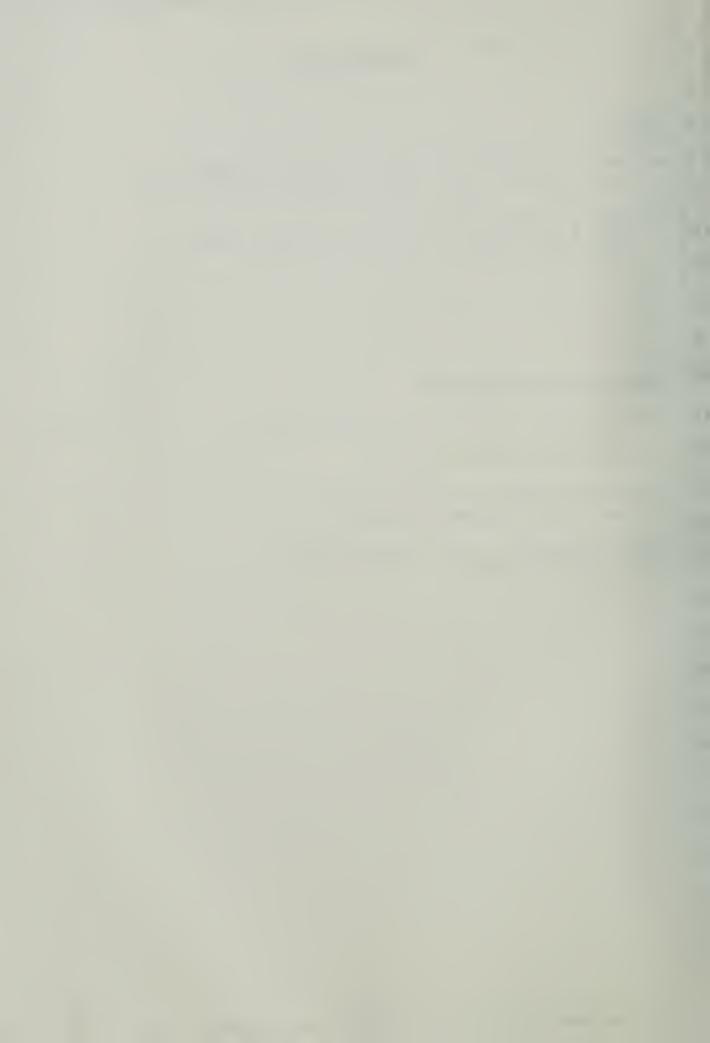
TOPICAL INDEX

3		Page
4	JURISDICTIONAL FACTS	1
5	STATEMENT OF FACTS "	2
6	ARGUMENT	2
7	CERTIFICATION OF COUNSEL	5
8	AFFIDAVIT OF SERVICE BY MAIL	6,7

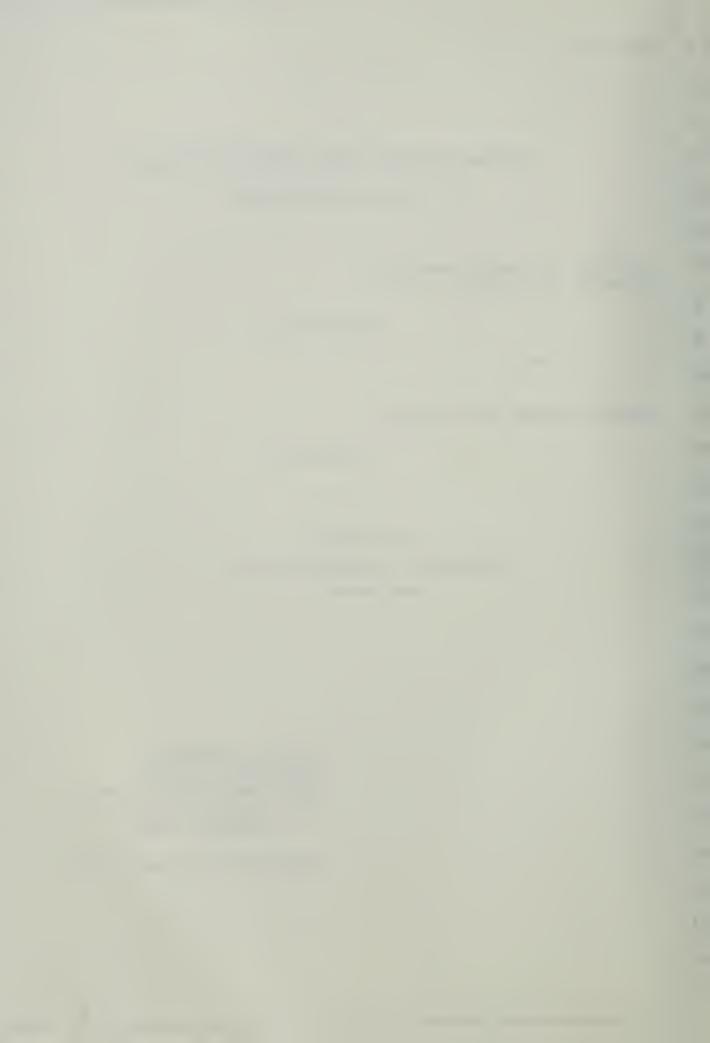


AUTHORITIES Page CASES Murphy v. Waterfront Commission of New York, 378 U.S. 52, 12 L. ed. 2d 678, 84 S.Ct. 1594 Ullman v. United States, 350 U.S. 422, 426, 100 L. ed. 511, 518, 76 S. Ct. 487 CODES and CONSTITUTIONS Sections 4411 and 4412, Title 26 U.S.C. 1,2,3,4 Section 7201, Title 26 U.S.C. Fourth Amendment to the Constitution of the United States, Title 26 Fifth Amendment to the Constitution of the United States

-ii-



CRIM. NO. 1 2 2 3 4 9 2 . ; 3 IN THE UNITED STATES COURT OF APPEALS 4 FOR THE NINTH CIRCUIT 5 6 DOMENIC N. MASTRIPPOLITO, 7 CLINTON B. HOWARD, 8 Appellants, 9 Vs. 10 UNITED STATES OF AMERICA, 11 12 Appellee. 13 14 15 APPELLANTS' OPENING BRIEF 16 17 18 19 20 JOHN J. BRADLEY Attorney at Law 215 West Fifth Street 21 Los Angeles, California MAdison 9-2261 22 23 Attorney for Appellants. 24 25 26



CRIM. NO.

2 2 3 4 9

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DOMENIC N. MASTRIPPOLITO, CLINTON B. HOWARD,

Appellants,

vs.

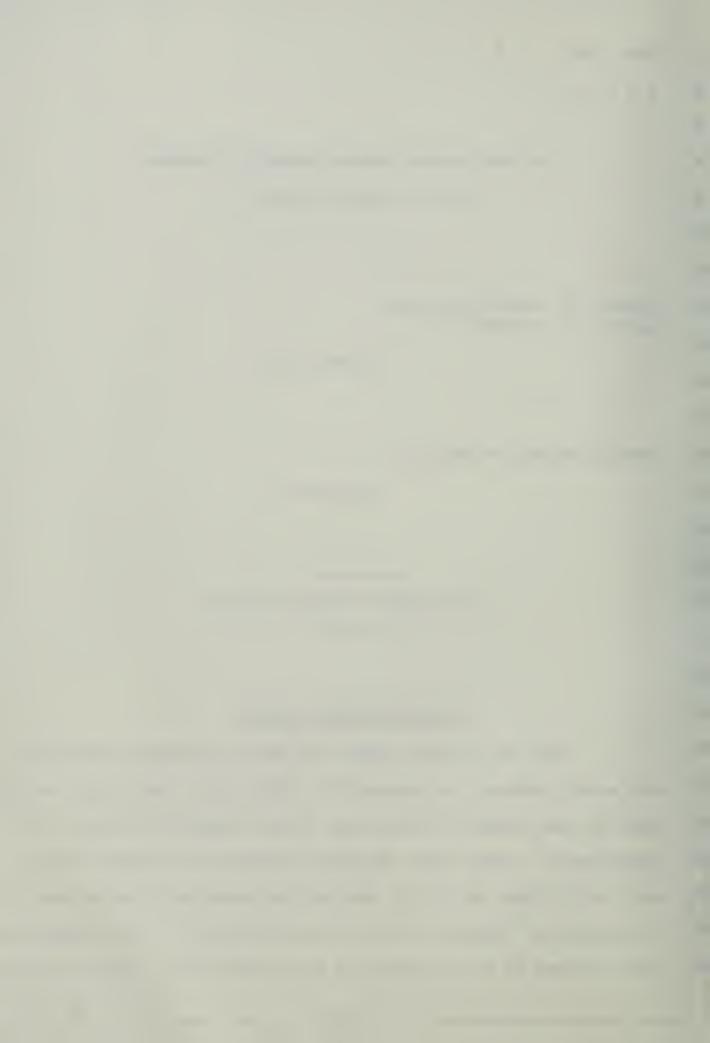
UNITED STATES OF AMERICA,

Appellee.

APPELLANTS' OPENING BRIEF

JURISDICTIONAL FACTS

This is a joint appeal by the two named appellants who were indicted on October 12, 1966, in a two count indictment by the Federal Grand Jury in the Central District of California. Each count charged violation of Section 4411 and 4412, Title 26 U.S.C. and wilful evasion of said tax in violation of Section 7201, Title 26 U.S.C. Each appellant was charged as a principal in one count and as an aider and



abettor in the other count.

On January 30, 1966, both appellants were found guilty by the Court, having waived jury trial, and were sentenced to one year on each count, said sentences to run concurrently.

On February 9, 1967, this sentence of appellant HOWARD was modified to a fine of \$300.00, which was paid on March 1, 1967.

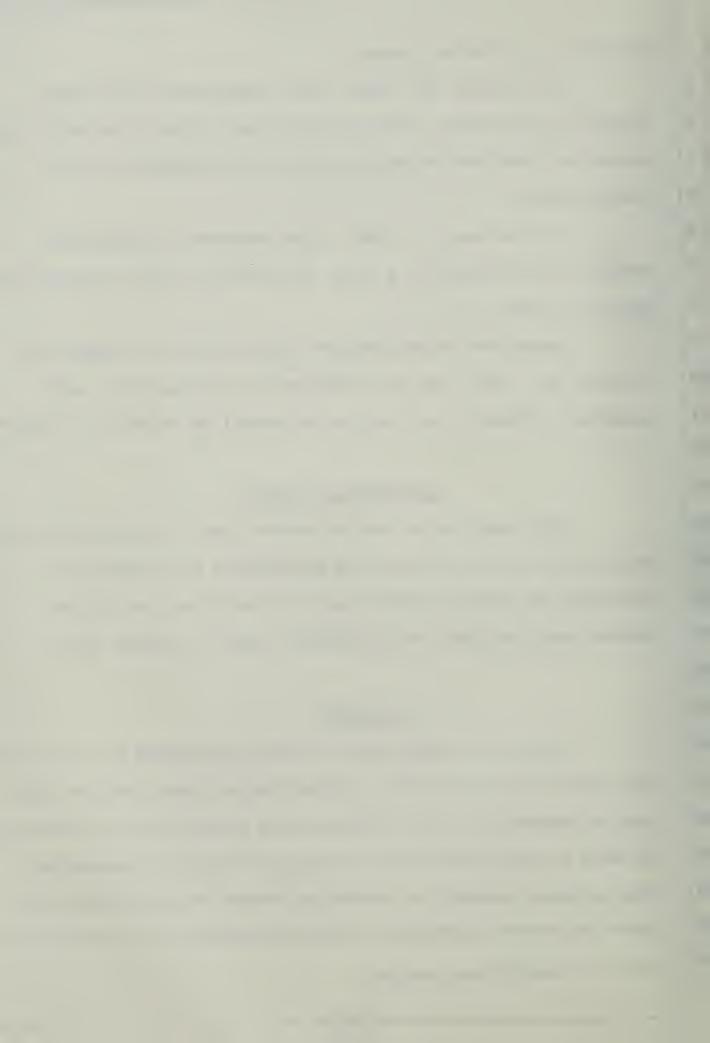
Appellant MASTRIPPOLITO filed notice of appeal on January 30, 1967, the day sentence was pronounced, and appellant HOWARD filed notice of appeal on February 6, 1967.

STATEMENT OF FACTS

The appellants herein entered into a stipulation by counsel that the evidence was sufficient to establish a violation of Sections 4411 and 4412 of Title 26, United States Code and that the pleadings were in proper form.

ARGUMENT

It is the contention of both appellants that Sections 4411 and 4412 of Title 26, United States Code violates the Fourth Amendment to the Constitution of the United States in as much as said provisions of Title 26 makes it mandatory that persons engaged in accepting wagers on horseracing or sporting events incriminate themselves under the law of the State in which they reside.



On June 15, 1964, the Supreme Court of the United States in Murphy v. Waterfront Commission of New York, 378 U.S. 52, 12 L. ed. 2d 678, 84 S. Ct. 1594, held that the Constitutional privilege against self incrimination protects a state witness against incrimination in a Federal Court where a state has granted a witness immunity against state prosecution.

In the case at bar there was no immunity granted

In the case at bar there was no immunity granted to appellants who were required to buy the tax stamp under the provisions of Sections 4411 and 4412 of Title 26, U.S.C.

However, the question raised by appellants herein does not turn upon the question of whether there was a grant of immunity by either the state or Federal jurisdiction.

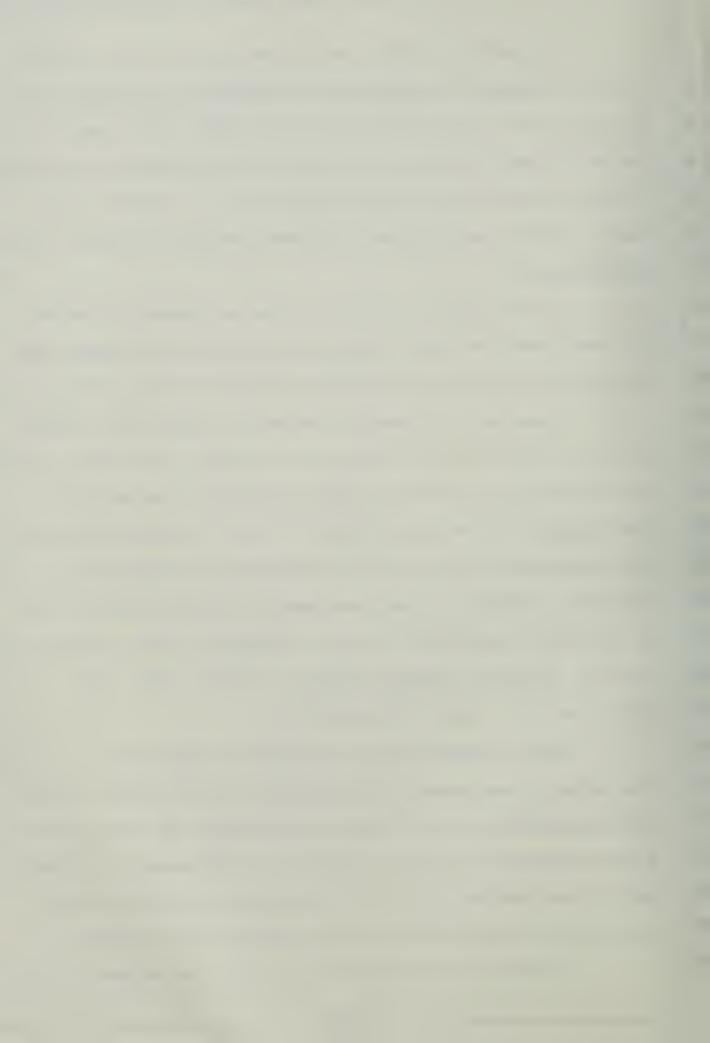
The Murphy case is significant in that it establishes that the privilege against self incrimination "registers an important advance in the development of our liberty - one of the great landmarks in man's struggle to make himself civilized."

Ullman v. United States, 350 U.S. 422, 426,

100 L. ed. 511, 518, 76 S. Ct. 487.

The ultimate question raised by appellants is whether the Federal Government can eliminate the privilege against self-incrimination in a state jurisdiction by the guise of a tax statute that has no realistic relationship to taxable activities except to protect a monopoly created in favor of race track operators in the states in this country.

It must be recognized that accepting wagers on horse



races and sporting events is not a violation of any Federal law. The race tracks in our various states do this openly and with state sanction about every day of each year.

In almost every state the Legislature has seen fit to protect a monopoly it has created by making it a felony for anyone not operating a licensed race track to accept a wager on a horse race.

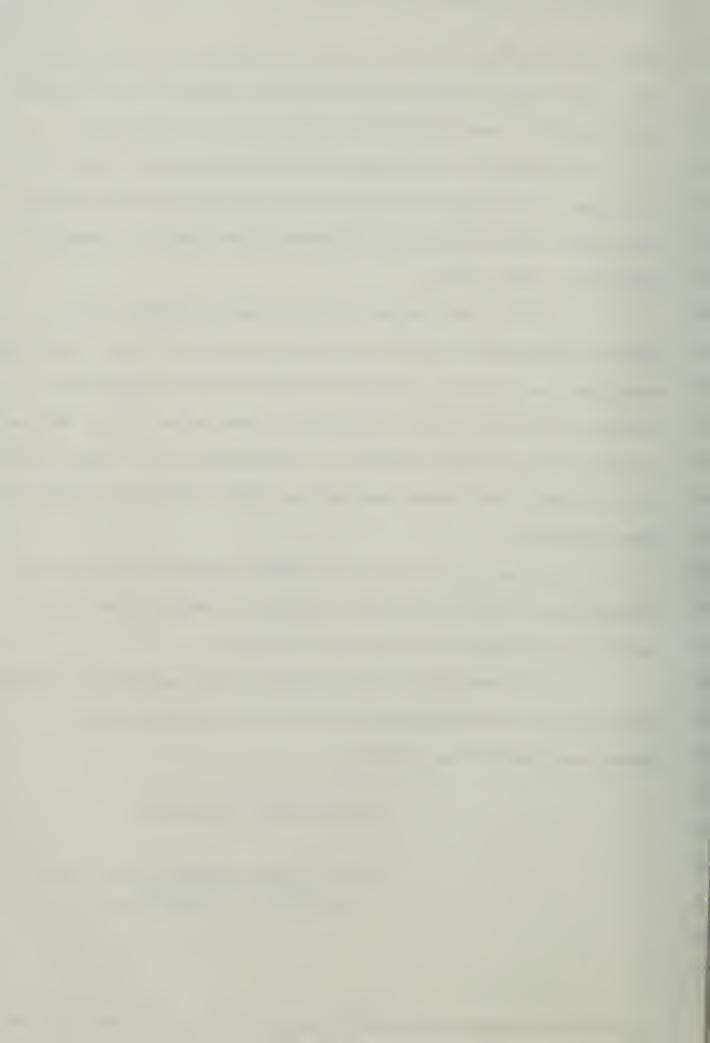
The critical issue in this case is whether the Federal Government, without granting immunity from state prosecution, can compel citizens of the states to furnish information which would incriminate them under state law as a condition to being engaged in competition with other citizens in their own state who derive their livlihood from the same business.

In other words does the Fifth Amendment to the Constitution of the United States apply to legislative action as well as judicial or executive action.

It is submitted that Sections 4411 and 4412 of Title 26 U.S.C. are unconstitutional and the convictions of appellants should be reversed.

Respectfully submitted

JOHN J. Bradley, Attorney for Appellants.



CERTIFICATION OF COUNSEL

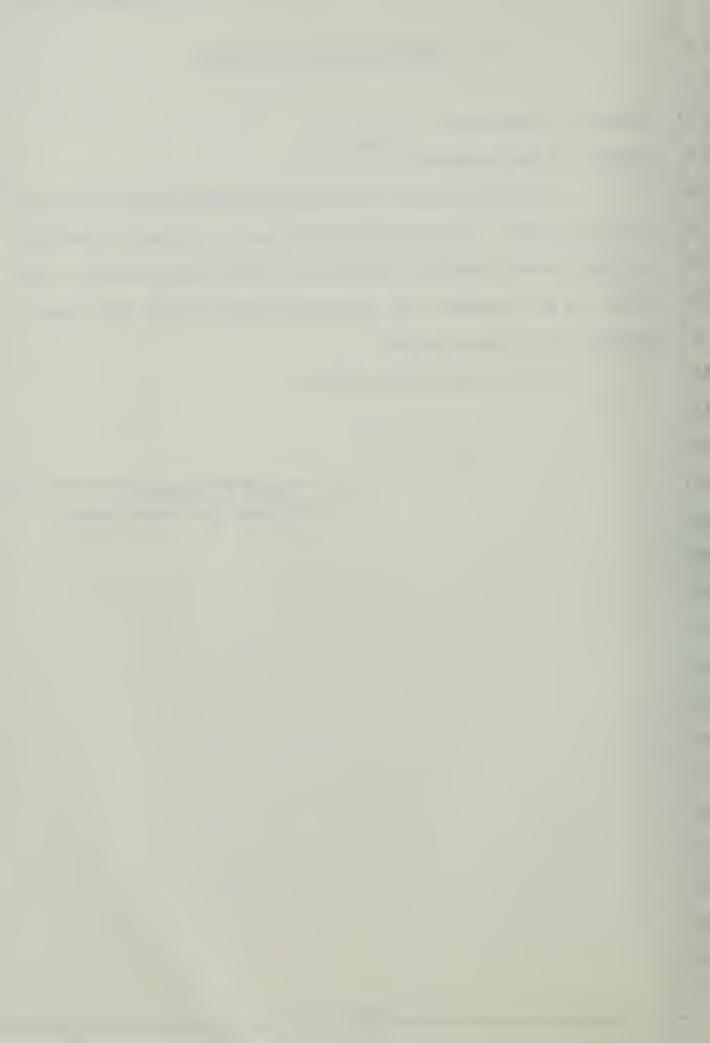
7 8

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

Dated: January 12, 1968.

JOHN J. BRADLEY, Attorney for Appellants.



AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

MARIE LUETCKE, being first duly sworn, deposes and says:

That I am and was at all times herein mentioned a citizen of the United States and employed in the County of Los Angeles, over the age of eighteen years and not a party to the within action or proceeding.

That my business address is Suite 419, 215 West Fifth Street, Los Angeles, California 90013.

That on January 12, 1968, I served the within

Appellants' Opening Brief on the Appellee in said action

or proceeding by depositing a true copy thereof, enclosed

in a sealed envelope with postage fully prepaid, in a mail
box located in the Lobby at 215 West Fifth Street, Los

Angeles, California, addressed to the attorneys for the said

Appellee at the office address of said attorneys as

follows:

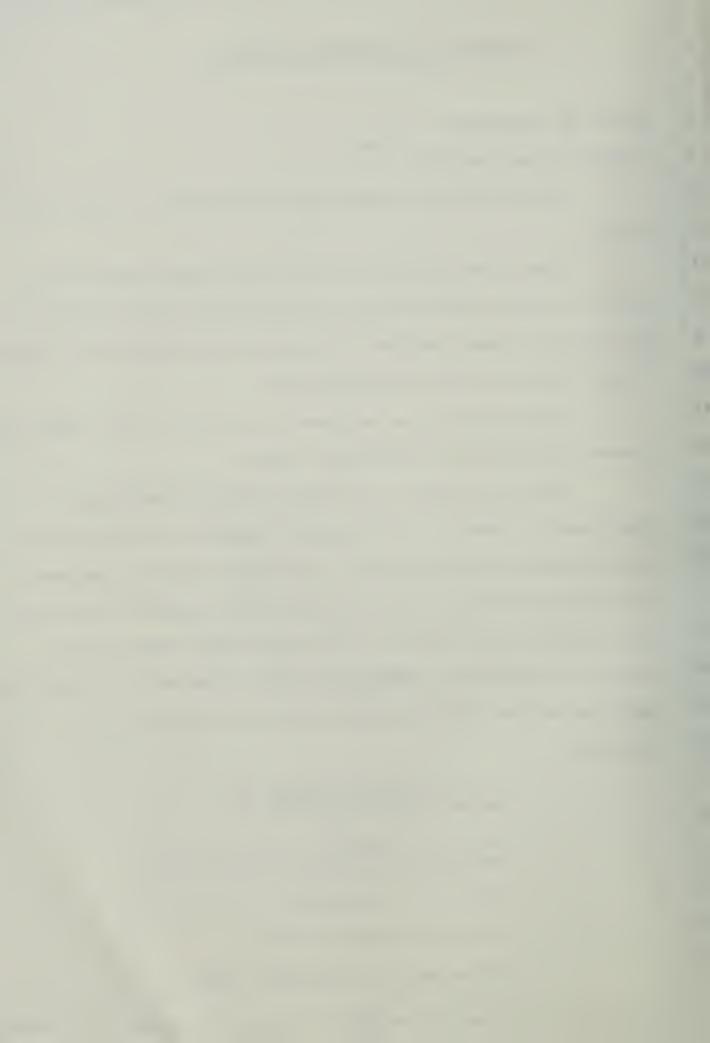
WILLIAM MATTHEW BYRNE, JR. United States Attorney

GERALD F. UELMEN
Assistant United States Attorney

600 U. S. Courthouse

312 North Spring Street

Los Angeles, California 90012



Marie Luetcke

Subscribed and sworn to ' before me this 12th day of January, 1968.

Lillian Ashley, Notary Public in and for the County of Los Angeles, State of California

My Commission Expires: September 3, 1970.

